

Why Mediation Works

The resolution of disputes can be approached in many ways. For example, we can focus on the interests of the parties, or we can attempt to determine which party is right, ("right" usually refers to legally right or sometimes morally or equitably right). In some cases the resolution of a dispute may be impacted by practical considerations of power or perceived power. *"Power" may translate into which party can cost the other the most (money, time, effort, emotional investment, opportunity costs, etc.), by pursuing or sustaining an action, or it may be a factor of which party has the best alternative to a negotiated agreement).*

Some options for resolving disputes can also be traumatic, and can damage the underlying relationship of the parties. In litigation, for example, a party may technically win the dispute, but may still not be satisfied with the overall outcome and its impact. Those in dispute may also feel that they still never had the opportunity to truly be heard (in more than a legalistic sense).

Mediation resolves disputes by focusing on the interests of the parties and attempting to reconcile those interests. In mediation, the parties themselves generally determine the outcome of the disputes, versus having a third party mandate a solution.

Focusing on both parties' positions and perceived needs and determining how everyone can get most, if not all, of what they want or need is not new, it is the age-old process of negotiation. What mediation generally adds to this process is the assistance of a neutral third-party in focusing the parties in dispute on their actual underlying interests, versus just their stated positions. Positions are what we want or feel that we are entitled to. Interests are the needs that are often the silent movers behind positions.

Mediation can provide a safe and open opportunity for parties to share information that can assist them in understanding both the positions of the other parties, as well as their underlying interests. This can produce opportunities for solutions that may meet both parties underlying needs, which are often actually more important than their stated positions. Once understood, sometimes these underlying needs may not be as much in conflict as are the stated positions of the parties appear to be.

The opportunity to truly listen to the other party and to have them listen to you and then to work together towards crafting a mutually agreeable solution is generally not available in more formal processes like litigation or administrative adjudication.

In addition, people who are upset are not always effective negotiators. They sometimes need the assistance of a neutral third party, a mediator, to get them past the strong emotions and to a point where they stop arguing about who is right or wrong and begin to talk about what they want, or preferably what they truly need. After the parties clarify their needs, they can move away from the question of who is right and wrong and move toward resolving the dispute.

The mediator's role is to diffuse emotion and improve communication between or among the parties. In most cases, if the parties get to this point, they can successfully resolve their disputes. Even if they do not resolve their dispute, they often leave the mediation with a better understanding of each other's situation, which can improve working relationships and may help to reduce the emotional toll of any adversarial proceeding that may lie ahead.